

SANDRA MEMMOTT
(ON RECONSIDERATION)

IBLA 84-888
88 IBLA 379

Decided July 24, 1986

Petition for reconsideration of Sandra Memmott, 88 IBLA 379 (1985), upon motion submitted by appellant. UMC 58767 through UMC 58774.

Petition granted; BLM decision of August 21, 1984, vacated; 88 IBLA 379, reaffirmed as modified.

1. Contests and Protests: Generally -- Mining Claims:
Abandonment -- Mining Claims: Contests -- Mining Claims:
Recordation -- Rules of Practice: Private Contests

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim because of a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982). A decision by BLM, written in response to a request by a rival claimant that claims be declared abandoned and void, and going to the merits of the rival claimant's allegations may properly be vacated by this Board.

APPEARANCES: Patrick J. Garver, Esq., Salt Lake City, Utah, for appellant-petitioner; David K. Grayson, Esq., Department of the Interior, Office of the Solicitor, Salt Lake City, Utah, for the Department of the Interior-respondent; Dexter L. Anderson, Esq., Fillmore, Utah, for Red Dome, Inc., and Gordon Griffith-respondents.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

This is a reconsideration of a decision of this Board dismissing an appeal by Sandra Memmott (Memmott) from an August 21, 1984, decision by the Bureau of Land Management (BLM) denying Memmott's request that certain claims owned by Red Dome, Inc. (Red Dome), be declared abandoned and void. The

determination by this Board that the appeal should be dismissed is found at Sandra Memmott, 88 IBLA 379 (1985).

Appellant had initially requested a declaration that Red Dome's mining claims were conclusively deemed to be abandoned because of Red Dome's alleged failure to comply with 43 U.S.C. § 1744 (1982). The Board found the matter was not appropriate for consideration, as a private contest is not available. Compliance with 43 U.S.C. § 1744 (1982) can be determined from the record, whereas 43 CFR 4.450-1 allows a party to "initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management ." (Emphasis added.) Further, noting the Department is without authority to resolve the right of possession to mining claims between rival claimants, we held BLM properly rejected appellant's request for a ruling that the conflicting claims were abandoned and void.

In her petition for reconsideration, appellant alleges the initial action was not a private contest but was an appeal from an August 21, 1984, determination of the Utah State Office, BLM, "declaring that the Red Dome group of mining claims had been properly filed in compliance with Section 314 of the Federal Land Policy and Management Act [43 U.S.C. § 1744 (1982)]." Appellant alleges the Board's decision dismissing the appeal without reaching the merits is in error, because BLM had made a determination that Red Dome's filings were in compliance with the mining claim recordation statutes. Appellant argues that, by dismissing the appeal, the Board decision effectively precluded consideration of the merits of that determination, and she will be faced with a final Department determination that Red Dome complied with the mining claim recordation filing requirements in any attempt to litigate this matter before a state court. We find some merit in this contention.

Had BLM merely refused to take action on appellant's request, the matter would properly be subject to dismissal. IMCO Services, 73 IBLA 374 (1983). The BLM decision did more, however. The August 21, 1984, decision states, in pertinent part:

According to our records, the Red Dome and Red Dome Nos. 1-7 placer mining claims were located 5/24/1935, 9/5/1946, 7/21/1936, 7/21/1936, 10/19/1936, 10/19/1936, 7/1/1938, 8/1/1938 respectively and the information received in this office November 27, 1978 showing the claim name, date of location, recording information, legal description, and the owners name and address. Additional information was requested regarding the land description for the Red Dome Claim Nos. 1, 4, and 7. This information was received January 31, 1979, which was prior to the October 22, 1979, filing date established by the Federal Land Policy and Management Act of 1976 for mining claims located prior to the Act.

This evidence showing that a recording of the mining claims had been made was accepted and made part of our records. The

annual affidavits of assessment work performed have been timely filed for each year since then. The Red Dome and Red Dome Nos. 1-7 placer claims are considered in compliance with Section 314 of the Federal Land Policy and Management Act.

Notice of transfer of interest should be filed with this office within 60 days however, no penalty for failure to file is assessed.

For the reasons stated in the preceding paragraphs, your request that we declare the Red Dome mining claims invalid for noncompliance with the Federal Land Policy and Management Act of 1976 is denied.

[1] As can be seen, rather than refusing to take action on appellant's request, as was the case in IMCO Services, supra, the BLM decision addressed the merits of appellant's contentions. Doing so was contrary to the stated policy of BLM that it "will not become the forum for the resolution of private party disputes between rival claimants." BLM Manual at 3833.41B. The Department has been consistent in its position that it is without authority to determine the question of right of possession as to claims between rival claimants. IMCO Services, supra; Gold Depository & Loan Co. v. Mary Brock, 69 IBLA 194 (1982); W. W. Allstead, 58 IBLA 46 (1981); John R. Meadows, 43 IBLA 35 (1979); John W. Pope, 17 IBLA 73 (1974). While a determination regarding sufficiency of mining claim recordation documents may be made by BLM and this Board, 1/ such determinations in response to third party requests should be avoided. 2/ Therefore, BLM's response to appellant's request should not have addressed the merits of the appellant's contentions. For that reason, we find it appropriate to vacate the August 21, 1984, BLM decision.

Having vacated the BLM decision without addressing the sufficiency or correctness of that decision, we do not find it necessary to address the other issues raised by Memmott.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for

1/ See, e.g., Precious Minerals Unlimited, Inc., 61 IBLA 136 (1982); John J. Vikarcik, 58 IBLA 377 (1981); Walter Everly, 52 IBLA 58 (1981); William E. Talbott, 52 IBLA 12 (1981); W. C. Miles, 48 IBLA 214 (1980); Wilma Hartley, 48 IBLA 83 (1980).

2/ We do not disparage the right of BLM on its own initiative to adjudicate any mining claim in terms of compliance with section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982). Clearly, this is BLM's responsibility in administering the statute. We note, however, that upon review of the sufficiency of the section 314 filings for a claim, no decision would ordinarily be issued approving the filings.

reconsideration is granted; the August 21, 1984, BLM decision is vacated; and the Board's prior decision in the matter, reported at 88 IBLA 379 (1985), is hereby reaffirmed as modified by this decision.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

